

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Adirondack Steel Casting Co., Inc. :
for Redetermination of a Deficiency or a Revision :
of a Determination or a Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Years 1975 - 1977. :
_____ :

AFFIDAVIT OF MAILING

State of New York
County of Albany

David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of April, 1983, he served the within notice of Decision by certified mail upon Adirondack Steel Casting Co., Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Adirondack Steel Casting Co., Inc.
135 S. LaSalle St., Suite 618
Chicago, IL 60603

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
15th day of April, 1983.

David Parchuck

Annice M. Haglund
AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
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Adirondack Steel Casting Co., Inc.	:	
for Redetermination of a Deficiency or a Revision	:	AFFIDAVIT OF MAILING
of a Determination or a Refund of Corporation	:	
Franchise Tax under Article 9A of the Tax Law	:	
for the Years 1975 - 1977.	:	

State of New York
County of Albany

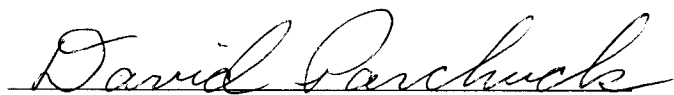
David Parchuck, being duly sworn, deposes and says that he is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 15th day of April, 1983, he served the within notice of Decision by certified mail upon Robert L. Dorfman the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

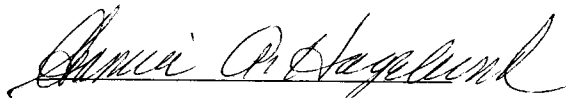
Robert L. Dorfman
George J. Dorfman & Company
338 N. Comrie Ave., MTD #4
Johnstown, NY 12095

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
15th day of April, 1983.





AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

April 15, 1983

Adirondack Steel Casting Co., Inc.
135 S. LaSalle St., Suite 618
Chicago, IL 60603

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Laws and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Robert L. Dorfman
George J. Dorfman & Company
338 N. Comrie Ave., MTD #4
Johnstown, NY 12095
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
ADIRONDACK STEEL CASTING CO., INC. : DECISION
for Redetermination of a Deficiency or for :
Refund of Franchise Tax on Business Corporations :
under Article 9-A of the Tax Law for the Years :
1975, 1976 and 1977.

Petitioner, Adirondack Steel Casting Co., Inc., 135 South LaSalle Street, Chicago, Illinois 60603, filed a petition for redetermination of a deficiency or for refund of franchise tax on business corporations under Article 9-A of the Tax Law for the years 1975, 1976 and 1977 (File No. 30850).

A formal hearing was held before Doris Steinhardt, Hearing Officer, at the offices of the State Tax Commission, State Campus, Albany, New York, on August 9, 1982 at 1:15 P.M. Petitioner appeared by George J. Dorfman & Company (Robert L. Dorfman, CPA). The Audit Division appeared by Paul B. Coburn, Esq. (Harry Kadish, Esq., of counsel).

ISSUE

Whether petitioner maintained a regular place of business outside New York during the years at issue so as to be entitled to allocate its business income.

FINDINGS OF FACT

1. On May 27, 1980, the Audit Division issued to petitioner, Adirondack Steel Casting Co., Inc. ("Adirondack"), a Notice of Deficiency, asserting additional franchise tax due for the year 1977 in the amount of \$40,286.41, plus interest of \$7,531.95. The Audit Division disallowed petitioner's allocation of business income, based upon its determination that petitioner did not maintain a regular place of business outside New York.

On the same date, the Audit Division issued to Adirondack two Statements of Tax Reduction or Overpayment for 1975 and 1976, allowing certain investment tax credits, but disallowing petitioner's claims for refund wherein it elected to allocate. (Petitioner did not allocate in its franchise tax reports as filed for 1975 and 1976.) The credits, in the amount of \$8,849.71 plus interest of \$3,158.99 for 1975 and in the amount of \$10,819.76 plus interest of \$2,942.54 for 1976, were applied to the deficiency asserted for 1977, thereby reducing the balance due to \$22,097.36.

2. Petitioner was incorporated under the laws of this state in 1961 and operates a steel foundry in Watervliet, New York. It is a subsidiary of Consolidated Foundries and Manufacturing Corp. ("Consolidated"). Consolidated consists of three divisions, Crucible Steel Casting Co., Western Foundry Company, and Casting Engineers; and in addition to petitioner, it has ownership in three other subsidiaries: Cutter, Bennett Securities Corp. ("Cutter-Bennett"), a securities house in New York City; Manaco, Inc. ("Manaco"), a management company; and Cast Technology, Inc.

3. The Chicago office which petitioner claims was its regular place of business outside New York during the years at issue was office space, occupying approximately 2,000 square feet, leased by Manaco. Manaco was responsible for the care and custody of corporate records and the administration of certain corporate functions, principally the secretarial, treasury and accounting functions, for Consolidated, Cutter-Bennett and Adirondack. Manaco was incorporated for the specific purpose of providing for the foundries services of a higher caliber than they could themselves generate, and at less cost. Manaco paid the rental, salaries and all other expenses incurred in the operation of

the Chicago office and was reimbursed by Consolidated, Cutter-Bennett and petitioner (in a manner described infra).

4. During the years at issue, Harry Rossi was president and Robert O'Drobinak was vice-president of Adirondack. The compensation and expenses of both officers were paid by Manaco and subsequently charged to Adirondack. Mr. O'Drobinak was stationed at the Chicago office and also served as vice-president of the other Consolidated subsidiaries.

5. The Chicago office staff consisted of a financial vice-president/secretary/treasurer (Mr. O'Drobinak), an assistant secretary, 3 accountants and 3 clerks. They performed the following functions and services for Consolidated, Cutter-Bennett and Adirondack: (a) making financial arrangements with suppliers and customers and managing funds and investments; (b) procurement of plant and equipment; (c) administration of all insurance matters, including acting as risk manager, establishing the necessity for insurance coverage, negotiating policies and entering into insurance commitments; (d) all secretarial duties, including preparing minutes of shareholders and of board of directors meetings, and maintaining stock certificate records, corporate charters and bylaws; (e) administration of all tax matters; and (f) administration of all accounting functions, including preparation of financial reports, communicating with public accountants, and supervising and directing accounting activities and auditing operations.

6. The expenses of the Chicago office were shared, roughly equally, by Consolidated and Adirondack through a management charge assessed on the basis of one percent of capital employed; Cutter-Bennett was not so assessed because it did not employ fixed assets in its business. The expenses and the portions

thereof charged to Consolidated and Adirondack for the years under consideration are shown below.

	<u>1975</u>	<u>1976</u>	<u>1977</u>
Chicago office expenses subject to sharing	\$949,000	\$1,072,000	\$890,000
Expenses charged to Consolidated	494,000	506,000	484,000
Expenses charged to Adirondack	455,000	566,000	406,000

The one-percent management charge was adjusted at year's end to distribute among Consolidated, Cutter-Bennett and Adirondack the balance of expenses not absorbed (such as group insurance, air travel expenses and payroll taxes).

7. For the years 1976 and 1977, the annual meetings of the shareholders and of the board of directors of Adirondack were conducted at 135 South LaSalle Street, Chicago.

8. When, in 1975, examiners of the Audit Division audited the franchise tax reports filed by certain members of the corporate group, they did so at the Chicago office. The documents set forth in Finding of Fact 1 were issued to petitioner at the Chicago address.

9. Petitioner has two sets of business stationery, one imprinted with the Watervliet address, the other with the Chicago address.

10. Petitioner introduced no evidence to establish that it paid corporation income tax to the State of Illinois.

CONCLUSIONS OF LAW

A. That during the years at issue, Tax Law section 210.3(a)(4) required that any corporation, which did not maintain a regular place of business outside New York, allocate all of its business income and capital to this state. The regulations extant during the period in question defined a regular place of business, in relevant part, as "any bona fide office (other than a

statutory office), factory, warehouse or other space which is regularly used by the taxpayer in carrying on its business." Former 20 NYCRR 4.11(b), applicable to taxable years beginning before January 1, 1976; 20 NYCRR 4-2.2(b), applying to taxable years beginning on or after January 1, 1976, repealed April 1, 1981.

B. That the Audit Division properly denied petitioner's allocation of its business income. To recapitulate the evidence offered, certain administrative functions of petitioner were carried out in Illinois (with a proportionate part of the expenses charged to petitioner) by Manaco employees and by one Adirondack officer, who also served as an officer of the other corporations in the group; the annual meetings of petitioner's shareholders and of its board of directors were conducted in Illinois; and a set of petitioner's stationery bore the Illinois address.

At the Chicago office of Manaco, its employees performed administrative services for petitioner on a part-time basis; thus, petitioner did not have employees stationed full-time in Illinois, regularly carrying on its business. Further, petitioner has not demonstrated that it held itself out as conducting business in Illinois, and that it filed tax returns and paid corporation income tax to Illinois upon income allocated thereto. The office leased by Manaco, therefore, did not constitute a regular place of business of petitioner outside this state. Matter of Micro Computer Corp., State Tax Comm., August 16, 1977, determination confirmed, Matter of Micro Computer Corp. v. State Tax Comm., 65 A.D.2d 867 (3d Dept.); Matter of UGP Properties, Inc., State Tax Comm., January 27, 1976, determination confirmed, Matter of UGP Properties, Inc. v. State Tax Comm., 64 A.D.2d 316 (3d Dept.).

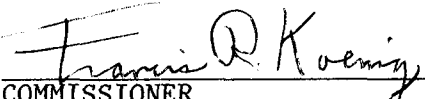
C. That the petition of Adirondack Steel Casting Co., Inc. is hereby denied, and the Notice of Deficiency issued on May 27, 1980 is sustained in all respects.

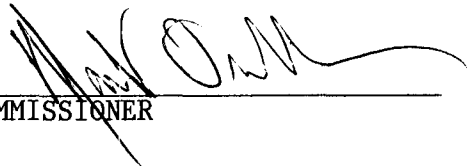
DATED: Albany, New York

APR 15 1983

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER